

SENATE BILL NO. 305

INTRODUCED BY E. STONINGTON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN EMERGENCY ADMINISTRATIVE RULE
5 MAY NOT BE USED TO IMPLEMENT AN ADMINISTRATIVE BUDGET REDUCTION; SPECIFICALLY
6 INCLUDING PROVIDERS OF SERVICES UNDER CONTRACTS WITH THE STATE AS AN AFFECTED
7 CLASS OF PERSONS FOR PURPOSES OF A STATEMENT OF THE PROBABLE ECONOMIC IMPACT OF
8 A RULE ON AFFECTED CLASSES OF PERSONS; AMENDING SECTIONS 2-4-303 AND 2-4-405, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 2-4-303, MCA, is amended to read:

14 **"2-4-303. Emergency or temporary rules.** (1) (a) If an agency finds that an imminent peril to the public
15 health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its
16 reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or
17 hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The
18 rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or
19 substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not
20 precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to
21 prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary
22 power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in
23 circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare
24 that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding
25 of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person.
26 The matter must be set for hearing at the earliest possible time and takes precedence over all other matters
27 except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril
28 and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must
29 stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by
30 2-4-306 must be strictly observed and liberally accomplished.

1 **(b) An emergency rule may not be used to implement an administrative budget reduction.**

2 (2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or
3 amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year,
4 upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the
5 secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule.
6 The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under
7 2-4-302 is not precluded during the period that the temporary rule is effective."

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9 **Section 2.** Section 2-4-405, MCA, is amended to read:

10 **"2-4-405. (Temporary) Economic impact statement -- family impact note.** (1) Upon written request
11 of the appropriate administrative rule review committee based upon the affirmative request of a majority of the
12 members of the committee at an open meeting, an agency shall prepare a statement of the economic impact
13 of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon
14 receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the
15 request is received by the committee, the committee shall give the agency a copy of the request, and if the
16 request is received by the agency, the agency shall give the committee a copy of the request. The agency shall
17 also prepare a family impact note upon receipt by the agency or the appropriate administrative rule review
18 committee of a written request for a family impact note made by at least 15 legislators. If the request is received
19 by the appropriate administrative rule review committee, the committee shall give the agency a copy of the
20 request, and if the request is received by the agency, the agency shall give the appropriate administrative rule
21 review committee a copy of the request. A family impact note must contain the material required by 5-4-504 if
22 appropriate data is available. As an alternative, the committee may, by contract, prepare the estimate or the
23 family impact note. Except to the extent that the request expressly waives any one or more of the following, a
24 requested economic impact statement must include and the statement prepared by the committee may include:

25 (a) a description of the classes of persons who will be affected by the proposed rule, including classes
26 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

27 (b) a description of the probable economic impact of the proposed rule upon affected classes of
28 persons, including but not limited to providers of services under contracts with the state, and quantifying, to the
29 extent practicable, that impact;

30 (c) the probable costs to the agency and to any other agency of the implementation and enforcement

1 of the proposed rule and any anticipated effect on state revenue;

2 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
3 inaction;

4 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the
5 purpose of the proposed rule;

6 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were
7 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

8 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
9 private resources; and

10 (h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based
11 and an explanation of how the data was gathered.

12 (2) A request to an agency for a family impact note or economic impact statement or a decision to
13 contract for the preparation of a note or statement must be made prior to the final agency action on the rule. The
14 note or statement must be filed with the appropriate administrative rule review committee within 3 months of the
15 request or decision. A request or decision for a note or statement may be withdrawn at any time.

16 (3) Upon receipt of an economic impact statement, the committee shall determine the sufficiency of the
17 statement. If the committee determines that the statement is insufficient, the committee may return it to the
18 agency or other person who prepared the statement and request that corrections or amendments be made. If
19 the committee determines that the statement is sufficient, a notice, including a summary of the statement and
20 indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication
21 in the register by the agency preparing the statement or by the committee, if the statement is prepared under
22 contract by the committee, and must be mailed to persons who have registered advance notice of the agency's
23 rulemaking proceedings.

24 (4) This section does not apply to rulemaking pursuant to 2-4-303.

25 (5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result
26 of the inaccuracy or inadequacy of a family impact note or economic impact statement required under this
27 section.

28 (6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the
29 factors listed in this section satisfies the provisions of this section. (Terminates October 1, 2003--sec. 8, Ch. 339,
30 L. 1999.)

1 **2-4-405. (Effective October 1, 2003) Economic impact statement.** (1) Upon written request of the
2 appropriate administrative rule review committee based upon the affirmative request of a majority of the
3 members of the committee at an open meeting, an agency shall prepare a statement of the economic impact
4 of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon
5 receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the
6 request is received by the committee, the committee shall give the agency a copy of the request, and if the
7 request is received by the agency, the agency shall give the committee a copy of the request. As an alternative,
8 the committee may, by contract, prepare the estimate. Except to the extent that the request expressly waives
9 any one or more of the following, the requested statement must include and the statement prepared by the
10 committee may include:

11 (a) a description of the classes of persons who will be affected by the proposed rule, including classes
12 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

13 (b) a description of the probable economic impact of the proposed rule upon affected classes of
14 persons, including but not limited to providers of services under contracts with the state, and quantifying, to the
15 extent practicable, that impact;

16 (c) the probable costs to the agency and to any other agency of the implementation and enforcement
17 of the proposed rule and any anticipated effect on state revenue;

18 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
19 inaction;

20 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the
21 purpose of the proposed rule;

22 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were
23 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

24 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
25 private resources; and

26 (h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based
27 and an explanation of how the data was gathered.

28 (2) A request to an agency for a statement or a decision to contract for the preparation of a statement
29 must be made prior to the final agency action on the rule. The statement must be filed with the appropriate
30 administrative rule review committee within 3 months of the request or decision. A request or decision for an

1 economic impact statement may be withdrawn at any time.

2 (3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement.
3 If the committee determines that the statement is insufficient, the committee may return it to the agency or other
4 person who prepared the statement and request that corrections or amendments be made. If the committee
5 determines that the statement is sufficient, a notice, including a summary of the statement and indicating where
6 a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register
7 by the agency preparing the statement or by the committee, if the statement is prepared under contract by the
8 committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking
9 proceedings.

10 (4) This section does not apply to rulemaking pursuant to 2-4-303.

11 (5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result
12 of the inaccuracy or inadequacy of a statement required under this section.

13 (6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the
14 factors listed in this section satisfies the provisions of this section."

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16 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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